IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 717 of 1989
With
FIRST APPEAL No. 720 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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TOPANDAS RADHOMAL - Appellant(s)
Versus
SHANKARLAL SOHANLAL & 4 - Defendant(s)

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Appearance :
MR SB VAKIL for Appellant(s) : 1,
MR KV SHELAT for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/08/2006

ORAL COMMON JUDGMENT

AS both these appeals are arising out of the common judgment and decree, they are being disposed of by this common judgment and order.

2. First Appeal No.717 of 1989 is filed by the appellant original plaintiff (hereinafter referred to as “the plaintiff”) challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 17-10-1988 passed in Civil Suit No.4186 of 1983. First Appeal NO.720 of 1989 is filed by the appellant – original plaintiff (hereinafter referred to as “the plaintiff”) challenging the judgment and decree passed by the learned City Civil Court at Ahmedabad passed in Civil Suit No.4185 of 1983.

3. Both the plaintiffs filed two suits before the learned City Civil Court at Ahmedabad for claiming compensation/damages alleged to have been caused by the respondents herein – original defendants in removing/ demolishing the stall constructed and put up by the plaintiffs. It was averred in the respective suits that they have taken on lease stall Nos.28 and 29 on the ground floor portion of centre of undivided land from the owners thereon on 28th May, 1983 and they constructed one cabin on the said place somewhere in October, 1983 at the cost of Rs.10,000/- and the defendants demolished each plaintiff's cabin on 14th November, 1983 at about 10:30 p.m. and therefore, they have filed the aforesaid suits

for a decree in the sum of Rs.10,000/- by way of damage/compensation and also prayed for a permanent injunction restraining the defendants from obstructing the raising stall or cabin of the area taken on lease by them in the Centre. The aforesaid suits were resisted by the defendant Nos. 1 to 4 and written statement was filed at Exh-12 in both the suits and it was denied that the plaintiffs have right in the area in the said land, which is claimed to have been taken on lease by them. They have also denied their rights to raise any cabin or stall in the said area. They have also denied that they have demolished any such cabin or stall constructed thereon. Defendant No.5 filed his written statement at Exh-40 in Civil Suit No.4185 of 1983 and at Exh-38 in Civil Suit No.4186 of 1983 by raising similar defence. The learned trial Court raised the issue at Exh-39 in Civil Suit No.4185 of 1983 and at Exh-37 in Civil Suit No.4186 of 1983. Plaintiff of Civil Suit No.4186 of 1983 was examined at Exh-67 and two more witnesses namely Maganbhai Valjibhai Patni was examined at Exh-86 and Alamchand Radhomal at Exh-120. On behalf of defendant Nos.1 to 4, one Jashraj Henraj was examined at Exh-127 as their sole witness. Defendant No.5 was examined at Exh-139. Both the sides produced on record certain

documentary evidences. After considering the documentary evidence and considering the oral evidence, the learned trial Court held that the plaintiffs have proved that they were the owners of the suits superstructure. However, negatived the contention on behalf of the plaintiffs that they had any lease hold rights of the land beneath are concerned. Considering the evidence on record, more particularly considering the fact that the plaintiff of Civil Suit No.4186 of 1983, who was examined at Exh-67 was at Bombay at the relevant time when the alleged demolition took place and according to the plaintiff, his cousin Ashokkumar, plaintiff of Civil Suit No.4185 of 1983 informed him, who was present at the time of actual demolition, however, he was not examined and therefore, the learned trial Court held that plaintiffs have failed to prove that the defendants have demolished the superstructure/ cabins in question and accordingly dismissed both the suits. Being aggrieved and dissatisfied with the same, the appellants original plaintiffs have preferred the present first appeals.

4. Shri Vakil, learned advocate appearing on behalf of the plaintiffs has vehemently submitted that though the learned trial Court has held that the plaintiffs were the

owners of the superstructure, the learned trial Court has materially erred in not awarding any compensation/ damages. It is also further submitted by him that the learned trial Court has further erred in holding that the plaintiffs have failed to prove that they were the owners of lease hold rights of the land beneath the superstructure. It is also further submitted by him that the learned trial Court has further materially erred in not granting the decree for permanent injunction and therefore, it is requested to allow both the appeals.

5. Both the appeals are opposed by Shri KV Shelat, learned advocate appearing on behalf of the original defendants. It is submitted by him that for the purpose of compensation/damages, the plaintiffs were required to first prove by leading evidence that it is the defendants who have demolished the cabins/stalls and in the present case, the plaintiff of Civil Suit No.4186 of 1983 was at Bombay and according to him, he got telephonic message from Ashokkumar, plaintiff of Civil Suit No.4185 of 1983 that the actual demolition is done by the defendants. However, said Ashokkumar has not been examined to prove that actually the defendants have demolished the construction and therefore, in absence of any other

evidence, the learned trial Court is right in dismissing the suit by holding that the plaintiffs have failed to prove that the defendants have demolished the stalls/cabins and therefore, it is requested to dismiss both the appeals.

6. It was the contention on behalf of the plaintiffs that the land beneath was given on lease and the superstructure was owned by them which came to be demolished by the defendants. On going through the evidence of the plaintiff of Civil Suit No.4186 of 1983 i.e. Topandas Radhomal who himself is examined on behalf of both the plaintiffs, was at the relevant time at Bombay and he got telephonic message from Ashokkumar, plaintiff of Civil Suit No.4185 of 1983 that the suit cabins are demolished by the defendants. The said contention was denied by the defendants. Unfortunately, Ashokkumar who is alleged to have seen the actual demolition (even as per Topandas), was not examined and it is Topandas only who has given evidence for himself and on behalf of Ashokkumar. In view of the fact that Ashokkumar was not examined and there is no other material on record and/or there is no other evidence that it is the defendants, who have demolished the

cabins/stalls in question, the learned trial Court is right in holding that the plaintiffs have failed to prove that actually the defendants have demolished the shops/cabins. Consequently, the learned trial Court has rightly dismissed the suits for compensation/damages as it was not proved by the plaintiffs that in fact the defendants have demolished the shops/cabins. It is also required to be noted at this stage that at the very place, subsequently new commercial centre is already constructed. Considering the over all facts and circumstances of the case, it cannot be said that the learned trial Court has committed any error in dismissing the suits. After going through the record and proceedings, this Court is in full agreement with the learned trial Court while dismissing both the suits.

7. For the reasons as stated above, both the appeals fail and the same are dismissed. No costs. Ad interim relief if any granted earlier stands vacated forthwith.

(M.R.SHAH,J.)

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